IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5897 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HITESHKUMAR PUNJABHAI PRAJAPATI

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR SJ DAVE, AGP for Respondent Nos.1, 2 & 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/07/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the legality and validity of the order of detention dated 5-4-2000 passed by the Police Commissioner, Surat City declaring him as dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or

attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. He has argued that detaining authority has relied upon five offences registered against the petitioner out of which, three offences were alleged to have been registered at Udhna Police Station. According to learned advocate for the petitioner, though the authority has relied upon the bail application and order dated 21-12-1999 passed on it by the Court in connection with Crime Register No.163 of 1999 registered Udhna Police Station in passing the order of detention, same have not been supplied to the petitioner and, therefore, the right of making an effective representation by the petitioner has been affected. Learned APP for the State, Mr.S.J.Dave has fairly admitted the same.

4. Hence, in view of the facts and circumstances and also in view of the judgment reported in AIR 1991 S.C. 2261 in the case of Ibrahim Shareef M. Madhafushi Vs. Union of India and Ors. more particularly point (6) of para 12, the order of detention is illegal. Point (6) of para 12 reads as under:

> "In case where detenu is released on bail and is at liberty at the time of passing the order of detention, the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case, the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

It is the duty of the authority to supply copy of the statements and documents with the detention order. Here in this case, copy of the bail application and the order passed on it, though relied upon by the authority in passing the impugned order of detention, have not been

supplied to the detenu. Therefore, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of knowing the grounds and making effective representation against the order of detention. Since the petitioner succeeds only on this point learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The impugned order of detention dated 5-4-2000 passed against the detenu is hereby quashed and set aside. The detenu-Hiteshkumar Punjabhai Prajapati is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/